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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1057

RICHARD A. BELANGER,
PETITIONER,

v.

ARTHUR B. MATTESON and
WARWICK TEACHERS UNION,
LOCAL 915, AFT, AFL-CIO,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

BRIEF FOR RESPONDENTS IN OPPOSITION

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TABLE OF CONTENTS

	Page
Opinions Below	1
Alleged Jurisdiction	2
Question Presented	2
Constitutional Provision Involved	2
Statement	2
Argument	7
I. Decision Below Is Clearly Correct	7
II. There Is No Substantial Federal Question Which Has Been Properly Raised	13
Conclusion	15

TABLE OF CITATIONS

Cases

Adler v. *Board of Education,* 342 U.S. 485, 72 S. Ct. 380, 96 L. Ed. 517 (1952)	13
Bailer v. *Local No. 470, International Teamsters, Chauffeurs, Warehousemen and Helpers, and Peter Schultz and Thomas McDonnell,* 400 Pa. 188, 161 A.2d 343 (1960)	11, 12
Berea College v. *Kentucky,* 211 U.S. 45, 29 S. Ct. 33, 53 L. Ed. 81 (1908)	15
Cardinale v. *Louisiana,* 394 U.S. 437, 89 S. Ct. 1161, 22 L. Ed. 2d 398 (1969)	13
Clark v. *Hein-Werner Corp.,* 8 Wis. 2d 264, 99 N.W. 2d 132 (1959), *reh. den.* 100 N.W. 2d 317 (1960)	11
Dewey v. *Des Moines,* 173 U.S. 193, 19 S. Ct. 379, 43 L. Ed. 665 (1899)	13
Ford Motor Company v. *Huffman,* 345 U.S. 330, 73 S. Ct. 681, 97 L. Ed. 633 (1952)	10, 12
Fox Film Corp. v. *Muller,* 296 U.S. 207, 56 S. Ct. 183, 80 L. Ed. 158 (1935)	15

Page

Humphrey v. *Moore*, 375 U.S. 335, 84 S. Ct. 363, 11 L. Ed. 2d 370 (1964) 8, 12

Murdock v. *Memphis*, 20 Wall 590, 87 U.S. 590, 22 L. Ed. 429 (1874) 15

New York Central & H.R. Co. v. *New York*, 186 U.S. 269, 22 S. Ct. 916, 46 L. Ed. 1158 (1902) 13

O'Brien v. *Curran*, 209 A.2d 723, 106 N.H. 252 (1965) 11, 12

Palmer Oil Corp. v. *Ameroda Corp.*, 343 U.S. 390, 72 S. Ct. 842, 96 L. Ed. 1022 (1952) 14

Primakow v. *Railway Express Agency*, 56 F. Supp. 413 (1943) 12

Providence Teachers Union Local 958 v. *School Committee*, 108 R.I. 444, 276 A.2d 762 (1971) 14

Safeway Stores v. *Oklahoma Retail Grocers Ass'n, Inc.*, 360 U.S. 334, 79 S. Ct. 1196, 3 L. Ed. 2d 1280 (1959) 13

State Farm Mutual Insurance Company v. *Duel*, 324 U.S. 154, 65 S. Ct. 573, 89 L. Ed. 812 (1960) 13

Steele v. *L. & N. Railroad Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173 (1944) 12

United Steelworkers of America v. *American Mfg. Co.*, 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1969) 8

United Steelworkers of America v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960) 8

United Steelworkers of America v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960) 8

Whitney v. *California*, 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927) 13

Wilson v. *Cook*, 327 U.S. 474, 66 S. Ct. 663, 90 L. Ed. 793 (1946) 13

Zucht v. *King*, 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194 (1922) 13, 14

BLEED THROUGH

Page

Constitutional Provisions

United States Constitution, Fourteenth Amendment . 2, 13

Statutes

28 U.S.C., Section 1257 (3) 13
Title 28, Chapter 9 of the General Laws of Rhode Island (as amended) 4
Title 28, Chapter 9.3 of the General Laws of Rhode Island (as amended) 14

Miscellaneous

Aaron, Reflections on the Legal Nature of Seniority Rights, 75 Harv. L. Rev. 1532, 1536 (1962) 12
Aaron, Some Aspects of the Union's Duty of Fair Representation, 22 Ohio St. L. J. 39, 49-54 (1961) . 11
Cox, Rights Under a Labor Agreement, 69 Harv. L. Rev. 601, 638 (1956) 12
Koretz, Labor Law Decisions of the Supreme Court: 1963 Term, 16 Syracuse L. Rev. 1, 14 (1964) 11

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

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Opinions Below

The Opinions of the Rhode Island Supreme Court and the Rhode Island Superior Court are set forth within Petitioner's Petition commencing at pages A-1 and A-52 respectively.

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Alleged Jurisdiction

The alleged jurisdictional requisites are set forth in the petition.

Question Presented

Whether an arbitration hearing before duly appointed arbitrators, who have, by whatever means, heard both sides of the controversy and have before them all the relevant information upon which to base a decision, raises a question as to whether the requirements of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution have been met.

Constitutional Provision Alleged To Be Involved

Petitioner alleges that the instant case raises an issue involving the Fourteenth Amendment to the United States Constitution which guarantees that no person shall be deprived of property without due process of law.

Statement

Respondent Arthur B. Matteson and Petitioner Richard A. Belanger are both residents of the City of Warwick, State of Rhode Island, and teachers in the Warwick School System. Matteson and Belanger applied for the position of Business Department Head at Warwick Veterans Memorial High School. Belanger was appointed to the position by a selection committee and Matteson grieved this appointment in accordance with the collective bargaining agreement between Respondent Warwick Teachers' Union and Warwick School Committee. The Warwick Teachers' Union is the collective bargaining representa-

BLEED THROUGH

tive for the teachers in the Warwick School System. Matteson and Belanger are members of this bargaining unit, which ratified the contract.

The contract requires that if the qualifications of the candidates for the position are "considered equal" then the candidate who has seniority shall be appointed.

After the initial appointment of Belanger to the position by the Warwick School Committee, Matteson who had two years and seven months seniority over Belanger and who believed that his qualifications were at least equal to those of Belanger, interviewed with John G. Venditto, Assistant Superintendent of Personnel, Warwick School Department, to ascertain the reasons why he had not been chosen. This procedure is authorized under the said contract. Having been dissatisfied with the outcome of this interview, Matteson commenced his grievance at Step 2 as permitted by the contract. Step 2 of the grievance procedure requires a hearing before the Assistant Superintendent of Personnel, John G. Venditto.

The hearing was held and Matteson presented his own case. There being no settlement of the grievance, Matteson proceeded to Step 3 of the grievance procedure which requires a hearing before the Superintendent of schools. This hearing was held and Matteson once again presented his grievance, without success, to the Superintendent. Matteson then proceeded to Step 4 of the grievance procedure and presented his case before the Warwick School Committee which, like the Superintendent at Step 3, and the Assistant Superintendent of Personnel at Step 2, sustained its decision to appoint Belanger to the position.

Mr. Matteson sought binding arbitration pursuant to Step 5 of the grievance procedure. A decision was made by the executive committee of the Warwick Teachers'

Union, after deliberation to place the matter before a panel of arbitrators.

Per agreement and in accordance with the established custom and practice of the Warwick Teachers' Union and the Warwick School Committee, each selected an arbitrator and these two arbitrators selected a third impartial arbitrator through the procedures established by the American Arbitration Association. Section 28-9-7 of the Rhode Island General Laws (as amended) permits the parties to agree to the method of appointing the arbitrators.

Venditto, who presented the case for the Warwick School Committee at the arbitration hearing on April 6, 1973, testified that he met with Belanger for about two hours two or three weeks before the hearing. The purpose of this meeting was to describe the arbitration procedure to Belanger and to prepare Belanger as a witness in support of the school committee's position that it had not violated the contract and that it had properly appointed Belanger to the position of Business Department Head. Venditto further testified that he met a second time with Belanger about one week before the hearing when Belanger offered further information about his background which he thought might assist in sustaining his appointment. Venditto testified that at no time did Belanger inquire about or advise him that he wanted an attorney present at the hearing. He never said or advised Belanger that he did not need an attorney.

Neither presentation at the arbitration hearing on April 6, 1973 was made by an attorney. Belanger was present throughout and participated in the proceedings which lasted from 10:00 a.m. to about 6:45 p.m. Matteson and two other witnesses testified at the hearing and in support of Matteson's contention as to his superior qualifications. The school committee presented four witnesses, including Belanger, in support of its position that the contract had

BLEED THROUGH

not been violated and that the appointment of Belanger as the better qualified candidate was correct.

Before the hearing began, Venditto once again talked to Belanger about his testimony. Venditto testified that he is responsible for representing the Warwick School Committee in arbitration proceedings and that he is involved in about seven or eight a year.

Belanger initially testified before the Superior Court that he was notified of the hearing by telephone ten days before the hearing, that he never met with Venditto about the arbitration hearing and would have remembered if he had. Yet, when recalled by his counsel on the following day after this testimony, Belanger changed his testimony and stated that he had been briefed as a witness by Venditto in preparation for the arbitration hearing, and that this preparation took place in Venditto's office.

Prior to the commencement of Matteson's grievance which is the subject matter of this case, Belanger testified that he had commenced a grievance against the appointment of another candidate to the position of Business Department Head at Pilgrim High School. Belanger was an unsuccessful candidate for this position and having been dissatisfied with the appointment, filed a grievance with the Warwick Teachers' Union against the Warwick School Committee pursuant to the contract and in the same way that Respondent Matteson, filed his instant grievance. Belanger had the contract and was familiar with the grievance procedure. He testified that after initiating his grievance he withdrew it.

Belanger testified that he never made a request to the Union which was not granted. There was never any hostility of the Union towards Belanger.

Belanger testified that he never advised anyone that any of his rights were not being protected. He did not ask that the hearing be held in abeyance. Nor did he seek

counsel at the hearing. Neither the Union nor School Committee had attorneys representing them. Belanger and Matteson testified as to their qualifications. Each was questioned by the arbitrators and the arbitrators took notes of the testimony.

There was testimony that some of the time limitations in which decisions had to be made at the various grievance steps had been relaxed by agreement of the parties. This is allowed by the contract in Article IV, Sections 3(a) and (j). During the entire time of the grievance procedure, Belanger held the position he now wishes returned to him.

The arbitrators rendered an opinion and a decision dated August 17, 1973, finding that the School Committee violated Article V, Section 4(b) of the contract by not appointing Matteson to the position of Business Department Head at Warwick Veterans' Memorial High School.

In its Decision dated October 29, 1975, the Rhode Island Supreme Court reviewed the evidence and factually determined that:

> "Belanger was thoroughly conversant with the grievance procedures. Sometime prior to his confrontation with Matteson, he had filed a grievance with the Union against an appointment to the position of Head of the Business Department at another Warwick high school. Belanger subsequently withdrew the grievance. Furthermore, Belanger had been notified of the hearing on Matteson's grievance 10 days before it occurred. The School Committee's representative at the hearing before the arbitrators was Mr. Venditto, the Assistant Superintendent in Charge of Personnel, a gentleman who is no neophyte when it comes to this type of proceeding. It is uncontradicted that prior to the hearing he had summoned Belanger to his

office where he and Belanger reviewed the testimony that Belanger would present to show his entitlement to fill the vacancy. At the hearing, Belanger and three other witnesses testified as to his qualifications for the position. He was present during the entire presentation of evidence and in the Superior Court he conceded that there was nothing further which he sought to offer at the hearing which was relevant to his qualifications. Belanger also agreed that at no time did he ever ask that the hearing be postponed or continued so that he could avail himself of the services of an attorney. Matteson appeared and testified at the hearing. Two other witnesses appeared on his behalf. The Union's executive secretary presented Matteson's grievance. The secretary is not an attorney. It is obvious from the record before us that the arbitrators had been presented a thorough and detailed listing of the qualifications and background of each candidate. We perceive no impropriety in the hearing conducted by the arbitrators which would justify the vacating of their award on the basis of the fair representation doctrine." (Petition A-15, 16)

Argument

I. The Decision Below Is Clearly Correct.

Admittedly, the Rhode Island Supreme Court concluded that the Union breached its duty of fair representation to the Petitioner. However, the Court likewise concluded that no damage by reason thereof was suffered by the Petitioner so as to make it necessary to cast aside the arbitration award.

Thus, the Rhode Island Supreme Court concluded that where there has been a fair hearing before duly appointed

arbitrators who have, by whatever means, heard both sides of the controversy and have before them all the relevant information upon which to base a decision, it will not overturn the award. (See A-14 of Petition).

The Rhode Island Supreme Court adopted the principles espoused by this Court on numerous occasions to the effect that where the parties to a collective bargaining agreement agree to submit disputes as to the enforcement and effect of their contract to private grievance procedures, culminating in final and binding arbitration, such arbitrators' decisions are, except for a very few limited situations, unreviewable by the Courts. *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1969); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960).

The Rhode Island Supreme Court stated:

> "In *Humphrey* v. *Moore*, 375 U.S. 335, 84 S. Ct. 363, 11 L. Ed. 2d 370 (1964), the Court refused to overturn the decision of a joint committee whose decision, according to the contract was to be final and binding, and in doing so, the Court rejected the employees' contention that even if the union had acted in good faith and was entitled to take the position it had, the employees were deprived of a fair hearing due to inadequate representation of their position. The Court noted that the employees had notice of the hearing, that they never requested a continuance, and that there was no evidence that they could have added anything to the hearing by way of facts or theory. *Id.* at 350-51, 84 S. Ct. 372, 11 L. Ed. 2d 382. It was, therefore,

'idle speculation to assume that the result would have been different had the matter been differently presented.' *Id.*

The facts in this case mandate a similar conclusion. Belanger was thoroughly conversant with the grievance procedures. Sometime prior to his confrontation with Matteson, he had filed a grievance with the Union against an appointment to the position of Head of the Business Department at another Warwick high school. Belanger subsequently withdrew the grievance. Furthermore, Belanger had been notified of the hearing on Matteson's grievance 10 days before it occurred. The School Committee's representative at the hearing before the arbitrators was Mr. Venditto, the Assistant Superintendent in Charge of Personnel, a gentleman who is no neophyte when it comes to this type of proceeding. It is uncontradicted that prior to the hearing he had summoned Belanger to his office where he and Belanger reviewed the testimony that Belanger would present to show his entitlement to fill the vacancy. At the hearing, Belanger and three other witnesses testified as to his qualifications for the position. He was present during the entire presentation of evidence and in the Superior Court he conceded that there was nothing further which he sought to offer at the hearing which was relevant to his qualifications. Belanger also agreed that at no time did he ever ask that the hearing be postponed or continued so that he could avail himself of the services of an attorney. Matteson appeared and testified at the hearing. Two other witnesses appeared on his behalf. The Union's executive secretary presented Matteson's grievance. The secretary is not an attorney. It is obvious from the record before us that the arbitrators had been presented a thorough and detailed listing of

> the qualifications and background of each candidate. We perceive no impropriety in the hearing conducted by the arbitrators which would justify the vacating of their award on the basis of the fair representation doctrine." (Petition, A-14, 15).

In *Ford Motor Company* v. *Huffman*, 345 U.S. 330, 73 S. Ct. 681, 97 L. Ed. 633 (1962), this Court was confronted with the appropriateness of a Union representation of the appellant therein by reason of its negotiating with the employer a collective bargaining agreement which contained seniority provisions which worked to the detriment of said appellant. At page 338, this Court recognized the wide latitude that must, of necessity, be granted to Unions representing employees by stating:

> ". . . The bargaining representative, whoever it may be, is responsible to, and owes complete loyalty to, the interests of all whom it represents. In the instant controversy, International represented, with certain exceptions not material here, all employees at the Louisville works, including both the veterans with, and those without, prior employment by Ford, as well as the employees having no military service. Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion."

BLEED THROUGH

Petitioner's total dependence upon the Wisconsin case of *Clark* v. *Hein-Werner Corp.*, 8 Wis. 2d 264, 99 N.W. 2d 132 (1959), *reh. den.* 100 N.W. 2d 317 (1960), is misplaced. The facts of the Clark case are totally different from the facts of the instant case inasmuch as the Wisconsin Court, in 99 N.W. 2d 132, at page 134 noted that none of the demoted supervisory employees were notified of the time and place of such hearing and none were present or participated in the arbitration proceedings. On the other hand, Mr. Belanger was notified, present throughout, participated and, indeed, testified that there was nothing more he would have offered.

In *O'Brien* v. *Curran*, 106 N.H. 252, 209 A.2d 723 (1965), the New Hampshire Supreme Court stated:

> "(1, 2) The plaintiffs attack the arbitration award and its confirmation by the master and the Court because they were not given notice of the hearing and were not allowed to intervene in the arbitration hearing. Reliance for this position is placed on *Clark* v. *Hein-Werner Corp.*, 8 Wis. 2d 264, 279, 99 N.W. 2d 132, 137, holding that 'where the interests of two groups of employees are diametrically opposed to each other and the union espouses the cause of one in the arbitration, it follows as a matter of law that there has been no fair representation of the other group'. (Emphasis supplied.) This view has been criticized, and represents a minority view which we do not follow. Koretz, Labor Law Decisions of the Supreme Court: 1963 Term, 16 Syracuse L. Rev. 1, 14 (1964); *Bailer* v. *Local No. 470*, 400 Pa. 188, 161 A.2d 343; Aaron, Some Aspects of the Union's Duty of Fair Representation, 22 Ohio St. L.J. 39, 49-54 (1961): The Union must make decisions and the determination of seniority cannot always be completely satisfactory to the same

> degree for all classes and groups of employees. 'The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion'. *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338, 73 S. Ct. 681, 686, 97 L. Ed. 633. The authority of the bargaining agent is not absolute (*Steele* v. *L. & N. Railroad Company*, 323 U.S. 192, 198, 199, 65 S. Ct. 226, 89 L. Ed. 173) and it is subject to a fiduciary duty of fair representation. Cox, Rights Under a Labor Agreement, 69 Harv. L. Rev. 601, 638 (1956). But this does not prevent the bargaining agent from choosing to seek an integrated seniority list even though the inevitable result may be harmful to some member of the Union. *Humphrey* v. *Moore*, 375 U.S. 335, 84 S. Ct. 363, 11 L. Ed. 370: Aaron, Reflections on the Legal Nature of Seniority Rights, 75 Harv. L. Rev. 1532, 1536 (1962)."

The Pennsylvania Supreme Court in *Bailer* v. *Local 470, International Teamsters, Chauffeurs, Warehousemen and Helpers, and Peter Schultz and Thomas McDonnell*, 400 Pa. 188, 161 A.2d 343 (1960), which is cited in the *O'Brien* case, concluded that the refusal by a Union of a member's request to be represented by his own counsel at the arbitration proceedings does not in any way indicate a breach of duty on the part of the Local Union.

In *Primakow* v. *Railway Express Agency*, 56 F. Supp. 413 (1943), upon which petitioner relies, the Plaintiffs therein received no notice whatsoever of the meetings held in Houston and Denver with respect to the arbitration proceeding. Clearly, there is no similarity between this and the instant case.

BLEED THROUGH

II. There Is No Substantial Federal Question Which Has Been Properly Raised.

It is necessary and essential to the jurisdiction of this Honorable Court under 28 U.S.C., Section 1257(3), the section relied upon by Petitioner, that a substantial federal question be properly raised in the State Court proceedings, *Zucht* v. *King*, 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194 (1922). It is to be noted that in the Complaint filed by the Petitioner herein (A-63 - 68) there is no reference whatsoever to the Fourteenth Amendment to the United States Constitution, nor in fact is there any reference to either the Federal or State Constitutions. At best, there is a passing reference that Petitioner "was not afforded due process of law" (A-67, 68), which is not otherwise identified nor amplified. Review by the Supreme Court is limited to the specific federal questions that were properly raised in the state courts. *Whitney* v. *California*, 274 U.S. 357, 362-3, 47 S. Ct. 641, 71 L. Ed. 1095 (1927); *Dewey* v. *Des Moines*, 173 U.S. 193, 197-8, 19 S. Ct. 379, 43 L. Ed. 665 (1899); *Wilson* v. *Cook*, 327 U.S. 474, 483-4, 66 S. Ct. 663, 90 L. Ed. 793 (1946); *Adler* v. *Board of Education*, 342 U.S. 485, 496, 72 S. Ct. 380, 96 L. Ed. 517 (1952); *State Farm Mutual Ins. Co.* v. *Duel*, 324 U.S. 154, 160-1, 65 S. Ct. 573, 89 L. Ed. 812 (1960). Petitioner is likewise precluded from urging a federal issue that was not raised or decided below, even though such an issue might have been raised. *Safeway Stores* v. *Oklahoma Retail Grocers Ass'n, Inc.*, 360 U.S. 334, 342, n. 7, 79 S. Ct. 1196, 3 L. Ed. 2d 1280 (1959); *Cardinale* v. *Louisiana*, 394 U.S. 437, 438, 89 S. Ct. 1161, 22 L. Ed. 2d 398 (1969).

As stated by this Court in *New York Central & H. R. Co.* v. *New York*, 186 U.S. 269 at 273:

> ". . . it is well settled in this Court that it must be made to appear that some provision of the federal, as distinguished from the State Constitutions was relied upon, and that such provision must be set forth."

Failure to meet these standards is cause for a denial of a petition for writ of certiorari. *Zucht* v. *King, supra; Palmer Oil Corp.* v. *Ameroda Corp.*, 343 U.S. 390, 72 S. Ct. 842, 96 L. Ed. 1022 (1952). Petitioner has failed to meet this requisite and his petition, therefore, should be denied.

Even assuming arguendo that Petitioner sought to properly raise a federal question and one which is properly drawn, it must be substantial to meet the requirements as heretofore enunciated by this Honorable Court. The instant case does not raise a substantial federal question. The Decision of the Rhode Island Supreme Court is based upon, and is entirely sustainable, upon grounds having a wholly local application. The Rhode Island Supreme Court was dealing with the Rhode Island School Teachers' Arbitration Act, Title 28, Chapter 9.3 of the Rhode Island General Laws (as amended), and a local labor agreement between the Warwick School Department and Warwick Teachers' Union. This is the legislative and contractual framework for the arbitration of local labor teacher controversies as experienced in the instant case. The Rhode Island Supreme Court in this case (Petition, A-18) and in *Providence Teachers' Union Local 958* v. *School Committee*, 108 R.I. 444, 448, 276 A. 2d 762, 765 (1971) recognized the validity of a binding arbitration clause of a labor-teacher agreement. Its Decision in this case, to sustain the decision by the arbitrators, was based on non-federal grounds which do not raise a substantial federal question. Indeed, this Honorable Court has consistently adhered to the self-imposed principle that it will not review a state court judgment which is based upon an adequate

BLEED THROUGH

and independent non-federal ground, even though a federal question be involved and perhaps wrongly decided. *Murdock* v. *Memphis,* 20 Wall. 590, 636, 87 U.S. 590, 22 L. Ed. 429 (1874); *Berea College* v. *Kentucky,* 211 U.S. 45, 53, 29 S. Ct. 33, 53 L. Ed. 81 (1908); *Fox Film Corp.* v. *Muller,* 296 U.S. 207, 56 S. Ct. 183, 80 L. Ed. 158 (1935).

Conclusion

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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